

**SBC Communications Inc.’s Petition for  
Forbearance Under 47 U.S.C. § 160(c)**

DC01/KASHJ/213541.1

## TABLE OF CONTENTS

	Page
I. THE COMMISSION LACKS AUTHORITY TO GRANT THE REQUESTED RELIEF .....	2
II. THE PREREQUISITE TO CONDUCTING A FORBEARANCE ANALYSIS HAS NOT BEEN SATISFIED .....	3
III. SBC HAS FAILED TO SATISFY THE FORBEARANCE CRITERIA.....	6
A. Section 271 Establishes a Separate and Independent Obligation on all BOCs To Make Available Network Elements, Including Broadband Network Elements.....	7
1. SBC Has a Continuing Obligation to Make Available Network Elements Even if the Commission Has Delisted those Network Elements Under Section 251 .....	8
2. The Unbundling Analysis in Section 251 Is Distinct from the Forbearance Analysis in Section 10 of the Act.....	10
B. The Commission Should Not Forbear From Enforcing the Requirement in Section 271 That BOCs Make Available Certain Network Elements .....	11
C. The Commission Also Should Not Forbear from Enforcing Section 271 Obligations with Regard to Broadband Network Elements.....	12
IV. CONCLUSION.....	14

## SUMMARY

SBC has requested that the Commission forbear from requiring Bell Operating Companies ("BOCs") to make available network elements under the section 271 competitive checklist that the Commission has excluded from unbundling under section 251 of the Act. Alternatively, SBC requests that, at a minimum, the Commission forbear from applying the section 271 competitive checklist to network elements used to provide broadband services. SBC has not demonstrated that it satisfies the statutory criteria for forbearance for either of its requests, and the Commission must deny SBC's petition.

Section 271 of the Act, by its own terms, explicitly prohibits the Commission from "limiting or extending" the competitive checklist, which is precisely the relief that SBC has requested. Assuming *arguendo* that section 271(d)(4) does not prohibit the Commission from granting the requested relief, the Commission still must deny SBC's petition, because section 271 has not been fully implemented. Contrary to SBC's assertion, a finding of compliance with the section 271 checklist is not tantamount to a finding that section 271 has been fully implemented for purposes of section 10 of the Act. Section 271 will not be fully implemented for purposes of section 10 until a competitive marketplace exists.

If, however, the Commission chooses to evaluate SBC's forbearance request, then it must conclude that SBC has failed to demonstrate that the statutory criteria for forbearance has been satisfied with regard to all network elements that are not required to be unbundled under section 251, or alternatively, all broadband network elements that are not required to be unbundled under section 251 of the Act. At bottom, SBC's petition rests on the erroneous and unfounded assumption that the forbearance criteria is satisfied because the Commission found, under section 251, that ILECs were not required to unbundle certain network elements. As the

Commission repeatedly has stated, section 271 establishes a separate and independent obligation on all BOCs to make available certain network elements. Section 271 in no way distinguishes between network elements used for broadband services and those used for narrowband services. Furthermore, the impairment analysis set forth in section 251 is separate and distinct from the forbearance analysis set forth in section 10, such that the fact that the Commission has delisted a particular network element from (or never included it in) the minimum list of UNEs is irrelevant for purposes of the forbearance analysis. SBC has not satisfied the statutory forbearance criteria, and the Commission must deny its petition in its entirety.

**SBC Communications Inc.’s Petition for  
Forbearance Under 47 U.S.C. § 160(c)**

DC01/KASHJ/213541.1

Commission forbear from applying the section 271 unbundling obligations to broadband network elements that are not unbundled under section 251 of the Act.

The PACE Coalition is composed of competitive local exchange carriers (“CLECs”) that provide a variety of telecommunications services to business and residential consumers throughout the country.<sup>3</sup> Each PACE Coalition carrier and Talk America, also a CLEC, offers a form of bundled local exchange and long distance services, among other services. In providing their services to residential and small business customers, PACE Coalition carriers and Talk America use the combination of unbundled network elements (“UNEs”) commonly referred to as UNE-P. Since the Commission already has excluded certain network elements from the minimum list of UNEs (referred to as “delisting”), these carriers only can obtain access to such network elements through section 271 of the Act. Without access to these network elements, competitive deployment will diminish in both narrowband and broadband services, thus frustrating the Commission's goal of widespread competitive deployment.

## **I. THE COMMISSION LACKS AUTHORITY TO GRANT THE REQUESTED RELIEF**

Congress emphasized the necessity of continuing access to loops, switching, transport, and signaling by drafting section 271 in a manner that circumscribes the Commission's ability to exercise its forbearance authority. By its own terms, section 271 prohibits the

---

<sup>3</sup> PACE Coalition members include: ACCESS Integrated Networks, Inc.; ATX Communications, Inc.; Birch Telecom; BizOnline.com, Inc. d/b/a Veranet Solutions; BridgeCom International; DataNet Systems; DSCI Corp.; Ernest Communications; IDS Telcom LLC; InfoHighway Communications; ITC^DeltaCom Communications, Inc.; Granite Telecommunications; MCG Capital Corporation; MetTel; Microtech-Tel; Momentum Business Solutions Inc.; nii communications; Sage Telecom, Inc.; and Z-Tel Communications, Inc.

Commission from granting the requested relief. Section 271(d)(4) explicitly states that the “Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).”<sup>4</sup> SBC has requested that the Commission forbear from requiring it to fulfill its obligations under the competitive checklist to make available any network element, or, at a minimum, any broadband network element, that the Commission has not required to be unbundled under section 251 of the Act. Under the Act, SBC has a continuing obligation – once granted 271 interLATA operating authority – to provide each of the network elements in the competitive checklist. SBC could have opted out of these requirements by choosing not to obtain in-region, long distance operating authority, but did not do so. As long as SBC continues to offer interLATA service, it must comply with the network access requirements set forth in section 271. SBC essentially has asked the Commission not only to limit and modify the checklist items by requesting that the obligations should not apply to any network elements that are not required to be unbundled – which the FCC lacks the authority to do – but also to *eliminate* certain checklist obligations. If the Commission cannot limit the checklist, then clearly it cannot remove an obligation to make a checklist network element available.

## **II. THE PREREQUISITE TO CONDUCTING A FORBEARANCE ANALYSIS HAS NOT BEEN SATISFIED**

Assuming *arguendo* that section 271(d)(4) does not prohibit the Commission from forbearing from enforcing SBC's obligations to make available network elements under section 271, SBC's petition is not ripe, because section 271 has not been fully implemented. Pursuant to section 10(d) of the Act, “the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those

---

<sup>4</sup> 47 U.S.C. § 271(d)(4).

requirements have been fully implemented.”<sup>5</sup> In other words, section 10(d) prohibits the Commission from forbearing from section 271 enforcement until that section as a whole – not just the competitive checklist – has been fully implemented. Section 271 will not be fully implemented, however, until a competitive marketplace exists.

Contrary to SBC’s assertion,<sup>6</sup> a finding of compliance with the section 271 checklist is not tantamount to a finding that section 271 has been “fully implemented” for purposes of section 10. Nowhere in the statute does it suggest that a BOC is not required to provide loops, transport, switching, and signaling once it has obtained section 271 authority. Indeed, under the express language of the Act, SBC has a continuing obligation to provide these network elements to requesting carriers after the Commission has granted its application to provide in-region interLATA service. Moreover, the anti-backsliding provisions set forth in section 271 demonstrate that there is no merit to SBC’s claim that section 271 has been fully implemented once interLATA operating authority is granted. Section 271(d)(6) provides for a range of penalties if the “Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval,”<sup>7</sup> and authorizes various remedies, including suspension of interLATA authority and fines. If section 271 is “fully implemented” once the BOC has satisfied the competitive checklist, then there would not be any need to maintain anti-backsliding provisions. Therefore, satisfying the competitive checklist for purposes of obtaining in-region interLATA authority is not equivalent to fully implementing section 271 of the Act.

---

<sup>5</sup> 47 U.S.C. § 160(d).

<sup>6</sup> See SBC Petition at 8.

<sup>7</sup> 47 U.S.C. § 271(d)(6).



Section 271 of the Act will not be fully implemented for purposes of section 10(d) until a competitive marketplace exists. In other words, the “fully implemented” language requires the Commission to find that there is a functioning wholesale market in a geographic area in which, among other things, downward pricing pressure is consistently exerted on wholesale elements and competitors are able to obtain what they need to serve end-users, and in which there is some assurance that the wholesale market will continue to function in the absence of an unbundling requirement. Then, and only then, can the question of whether section 271 has been “fully implemented” be considered. The existence of a mature wholesale market not only will protect consumers and other competitors, but also will ensure that each mode of entry that Congress authorized in the Act will continue to be viable in the absence of that provision. Section 271 cannot be said to have been fully implemented until such time as competition has taken root and each mode of local market entry that Congress envisioned is available in the absence of regulatory oversight.

In requiring section 271 to be fully implemented, Congress did not permit the Commission to parse various network elements or categories of services. In other words, a fully competitive marketplace must exist for all services. The Commission cannot conclude, as SBC would argue, that a competitive marketplace for a particular network element or for broadband services – which does not exist in any event – is sufficient to satisfy the fully implemented standard for purposes of forbearing from section 271 enforcement with regard to that network element or broadband services.

The competitive marketplace still is in the nascent stages of development seven years after passage of the 1996 Act. SBC and the other BOCs have retained control of the bottleneck facilities necessary to provide service. The Supreme Court noted this fact, stating that

BOCs “have an almost insurmountable competitive advantage” owing mostly to their control of loops, transport, and switching.<sup>8</sup> This is true with regard to both narrowband and broadband services. Indeed, in the *Triennial Review Order*, the Commission found that it must continue to require ILECs to offer unbundled access to stand-alone mass market loops used for the provision of broadband services.<sup>9</sup> In doing so, the Commission emphasized, regardless of whether the carrier is providing a broadband or a narrowband service, that loop costs are largely fixed and sunk and that ILECs already enjoy a large subscriber base.<sup>10</sup> Therefore, the competitive marketplace does not exist such that section 271 has been fully implemented for purposes of section 10(d).

### **III. SBC HAS FAILED TO SATISFY THE FORBEARANCE CRITERIA**

SBC's argument that the Commission should forbear from enforcing the explicit requirement in section 271 that it make available loops, transport, switching, and signaling rests on the erroneous assumption that the forbearance criteria is satisfied where the Commission has found that CLECs are not impaired without access to those network elements under section 251.<sup>11</sup> The PACE Coalition and Talk America submit that the Commission should not reach the forbearance analysis because the statutory prerequisite – full implementation of section 271 – has not yet occurred. If the Commission evaluates SBC's forbearance request notwithstanding this patent defect, then it must conclude that SBC has failed to satisfy the statutory criteria for

---

<sup>8</sup> *SBC Communications, Inc. v. FCC*, 122 S.Ct. 1646, 1662 (2002).

<sup>9</sup> *See Triennial Review Order* ¶¶ 199, 237.

<sup>10</sup> *See id.* ¶ 237.

<sup>11</sup> *See SBC Petition* at 12-13 (stating that if “section 706 supports the decision not to unbundle broadband facilities for purposes of section 251 – and the Commission has unequivocally held that it does – then so too does that section support forbearance from the application of section 271 unbundling obligations to those same facilities.”).

forbearance from the section 271 unbundling obligations for elements that are not unbundled under section 251, whether the network element is used for narrowband or broadband service.

Section 10 of the Act enumerates specific criteria that must be satisfied in order to grant forbearance. Pursuant to section 10 of the Act, the Commission cannot forbear from requiring SBC to make available network elements under section 271 unless:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>12</sup>

In determining if forbearance is in the public interest, the Commission must consider whether “forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”<sup>13</sup> SBC has not – and cannot – satisfy the forbearance criteria with regard to network elements that are not unbundled under section 251 whether used for broadband or narrowband services.

**A. Section 271 Establishes a Separate and Independent Obligation on all BOCs To Make Available Network Elements, Including Broadband Network Elements**

SBC makes myriad arguments to support its position that it should not be required to make available network elements that the Commission has delisted under section 251. Not one of these arguments can be supported by law. The Commission repeatedly has emphasized

---

<sup>12</sup> 47 U.S.C. § 160(a)(1)-(3).

<sup>13</sup> 47 U.S.C. § 160(b).

that section 271 of the Act imposes a separate and distinct obligation on all BOCs, including SBC, to make available network elements regardless of whether the network element is unbundled under section 251 of the Act. In requiring BOCs to make available network elements under section 271, the Act does not distinguish between elements used to provide narrowband service and those used to provide broadband service. Moreover, the impairment analysis set forth in section 251 is separate and distinct from the forbearance analysis in section 10, such that the fact that the Commission has delisted a particular network element from (or never included in) the minimum list of section 251(c)(3) UNEs is irrelevant for purposes of the forbearance analysis.

**1. SBC Has a Continuing Obligation to Make Available Network Elements Even if the Commission Has Delisted those Network Elements Under Section 251**

In its petition for forbearance, SBC argues that it should not be required to unbundle any network element that the Commission has excluded from the section 251 unbundling obligations.<sup>14</sup> Alternatively, SBC argues that the Commission should forbear, at a minimum, from applying the section 271 unbundling obligations to those network elements used to provide broadband services.<sup>15</sup> The premise upon which SBC bases its petition for forbearance is false: the Commission's decision not to require ILECs to unbundle certain network elements under section 251 does not affect SBC's obligation to make available those same network elements under section 271 of the Act.

The Commission already has rejected SBC's claim that checklist items four through six and checklist item ten do not impose an independent obligation on BOCs to make available network elements that have been delisted. In the *Triennial Review Order*, the

---

<sup>14</sup> See SBC Petition at 5-6.

<sup>15</sup> See *id.* at 8-10.

Commission correctly reaffirmed that a BOC's obligation to provide network elements under section 271 of the Act is independent of its obligation under section 251(c)(3) of the Act.<sup>16</sup> In doing so, the Commission emphasized that "the plain language and structure of section 271(c)(2)(B) establishes that BOCs have an independent and *ongoing* access obligation under section 271."<sup>17</sup> Indeed, the Commission reiterated that, under section 271, BOCs must continue to "provide access to loops, switching, transport and signaling regardless of any unbundling analysis under section 251."<sup>18</sup> Therefore, the Commission's decision not to unbundle certain network elements – whether used for broadband or narrowband services – does not provide any legal basis for the relief that SBC has requested. This obligation applies to all BOCs equally, and the Commission must reject SBC's attempt to eviscerate section 271 of the Act.

There is no merit to SBC's claim that section 271 was intended solely "in the event an application for section 271 relief preceded the Commission unbundling rules."<sup>19</sup> In drafting the Act, Congress specifically carved out the entities to whom the requirements would apply and the particulars of such requirements. The Commission correctly explained that, by its own terms, section 251 applies to all ILECs, whereas section 271 applies only to BOCs, a significantly smaller category of ILECs.<sup>20</sup> Congress designed section 271 to address the BOCs' long-held monopoly over local telecommunications services and to condition BOC entry into the long distance market on the opening of the local exchange market to competition.<sup>21</sup> Congress

---

<sup>16</sup> See *Triennial Review Order* ¶¶ 645-57.

<sup>17</sup> *Id.* ¶ 654 (emphasis added).

<sup>18</sup> *Id.* ¶ 653.

<sup>19</sup> SBC Petition at 2.

<sup>20</sup> See *Triennial Review Order* ¶ 655.

<sup>21</sup> As to the Commission recognized in the *Triennial Review Order*, section 271 was direct result of the modification of final Judgment (MFJ), which established the terms for the settlement of the Department of Justice's antitrust suit against AT&T. See *Triennial*

specifically intended to create independent obligations on the BOCs to unbundle specific network elements regardless of what and when the Commission required LECs to unbundle under section 251 of the Act.<sup>22</sup> If Congress had intended for sections 251 and 271 to be co-extensive, it would not have differentiated between ILECs and BOCs.

## **2. The Unbundling Analysis in Section 251 Is Distinct from the Forbearance Analysis in Section 10 of the Act**

There is no merit to SBC's argument that a finding of no impairment under section 251 is sufficient to satisfy each of the forbearance criteria.<sup>23</sup> SBC's argument squarely contradicts the plain language of the statute, Congress's intent, and the Commission's repeated and persistent statements that sections 251 and 271 establish independent unbundling obligations. If the Commission were to accept SBC's premise as true, then SBC would not have an obligation under section 271 to make available any loops, switching, transport, or signaling that the Commission had delisted under section 251, which is precisely the relief SBC seeks. Under this interpretation, it would not have been necessary for Congress to have created a separate obligation in section 271 of the Act; SBC's interpretation does not give any meaning to section 271 of the Act, and must be rejected.

Moreover, the unbundling analysis in section 251 is distinct from the forbearance analysis in section 10 of the Act. The impairment analysis in section 251(d)(2)(B) focuses on whether preventing a requesting carrier from having access to a UNE would impair the carrier

---

*Review Order* at note 1986 (citing *United States v. Western Elec. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.*, *Maryland v. United States*, 460 U.S. 1001 (1983)).

<sup>22</sup> In contrast to section 271, which identifies four specific network elements that BOCs must make available, section 251 directs the Commission to determine which network elements ILECs must unbundle.

<sup>23</sup> See SBC Petition at 5.

from offering the services that it seeks to offer.<sup>24</sup> In contrast, section 10 focuses on whether forbearance will undermine statutory or regulatory requirements that ensure that services are provided in a just, reasonable, and nondiscriminatory manner.<sup>25</sup> These inquiries are distinct, and, therefore, the fact that the Commission has concluded that a carrier is not impaired without access to a network element is not determinative of whether the forbearance standard has been met.

**B. The Commission Should Not Forbear From Enforcing the Requirement in Section 271 That BOCs Make Available Certain Network Elements**

SBC has not satisfied the statutory criteria for forbearance and the Commission should deny SBC's request to forbear from enforcing the requirement that BOCs make available loops, transport, switching, and signaling that are not required to be unbundled under section 251. First, SBC has not demonstrated that forbearance is unnecessary to ensure that a carrier's rates, terms and conditions are just and reasonable and are not unjustly or unreasonably discriminatory. SBC relies exclusively on the Commission's finding of no impairment to support its position that it satisfies this prong of the test. As discussed above, the impairment test is separate and distinct from the forbearance criteria, and a finding of no impairment in no way translates to a finding that the replacement rates, terms and conditions will be just and reasonable.

SBC also has not demonstrated that forbearance is unnecessary for the protection of consumers. Indeed, the reverse is true: absent access to network elements, consumers will have fewer competitive alternatives. Furthermore, SBC has not demonstrated that forbearance is in the public interest. As part of the public interest determination, the Commission must

---

<sup>24</sup> See, e.g., *Triennial Review Order* ¶ 164.

<sup>25</sup> 47 U.S.C. § 160.

consider whether forbearance will promote competitive market conditions. As the Commission recognized in the *Triennial Review Order*, ILECs have retained control over the vast majority of the local market, and competition remains in its infancy. Forbearing from enforcing the section 271 checklist items that are not required to be unbundled under section 251 would impede competition, and, therefore, forbearance is not in the public interest.

**C. The Commission Also Should Not Forbear from Enforcing Section 271 Obligations with Regard to Broadband Network Elements**

The Commission also should reject SBC's request that, at a minimum, it forbear from enforcing section 271 of the Act with regard to network elements used to provide broadband services. There is no basis under section 271 to distinguish between network elements used to provide narrowband services and those used in the provision of broadband services. Under the plain language of section 271, as a BOC that has obtained section 271 authority, SBC is required to provide loops, transport, local switching, and signaling to requesting carriers. Section 271 does not contain any exceptions to this absolute requirement; it makes no distinction, for example, between loops used to provide broadband services and those used to provide more traditional narrowband services.<sup>26</sup> As one example, section 271(c)(2)(B)(iv) explicitly requires BOCs to provide "[l]ocal loop transmission from the central office to the customer's premises," and does not distinguish between loops used for broadband and those use for narrowband. As another example, section 271(c)(2)(B)(vi) requires BOCs to provide "[l]ocal switching;" this section and does not distinguish between circuit- or packet-switching technology.

---

<sup>26</sup> The Commission consistently has interpreted section 271's requirement to provide unbundled "[l]ocal transmission" to mandate unbundling of loops used to provide both broadband and narrowband services. *See, e.g., Application by Bell Atlantic New York for Authorization Under Section 271 of the Telecommunications Act to Provide In-Region InterLATA Service in the State of New York*, 15 FCC Rcd 3953, 4095-127, ¶¶ 268-342 (1999).



In addition, there is no merit to SBC's claim that section 271 pertains only to legacy voice networks.<sup>27</sup> The existence of section 706 of the Act is evidence that Congress specifically contemplated broadband when drafting the Act. If Congress had intended to carve out network elements used for broadband in section 271 it would have done so.

SBC has not satisfied the statutory criteria for forbearance from enforcing the section 271 competitive checklist with regard to network elements used to provide broadband service. First, SBC has not demonstrated that rates, terms and conditions are just and reasonable and are not unjustly or unreasonably discriminatory. To the contrary, granting SBC's request that it be relieved of any obligation to provide network elements used for broadband services would enable SBC to charge unjust, unreasonable, and discriminatory rates, particularly due to the lack of competitive alternatives. SBC's attempts to remove all CLEC access to these network elements would leave the BOCs as the primary – and, in many cases, the sole – provider of certain services that rely on these network elements. As such, there would not be sufficient competition, as SBC asserts, to ensure that rates were just and reasonable and not unreasonably discriminatory.

Second, the section 271 checklist provisions are necessary for the protection of consumers. In support of its forbearance request, SBC emphasizes – correctly – that forbearance will benefit one entity in particular: SBC. SBC claims that the Commission should forbear from enforcing section 271 of the Act with regard to specific broadband network elements because to do otherwise would require SBC to redesign its network architecture.<sup>28</sup> SBC has not provided any evidence in support of its request. In declining to require ILECs to provide unbundled access to fiber feeder and loop plant under 251, the Commission relied on the BOCs'

---

<sup>27</sup> SBC Petition at 13-14.

<sup>28</sup> *See id.* at 2, 9-11.

representation that they would continue to make these network elements available.<sup>29</sup> The Commission explicitly stated that it expected that “incumbent LECs will develop wholesale service offerings” for access to their fiber feeder.<sup>30</sup> Given the BOCs' representation that they will make these network elements available, SBC's unsupported argument that it would have to redesign its network is specious.

Nor has SBC demonstrated that forbearance is in the public interest. SBC's petition has broad industry-wide implications that are inappropriate to address in the context of this forbearance petition. SBC claims that forbearance will facilitate the Commission's goal of broadband deployment in furtherance of section 706 of the Act. SBC has not provided the Commission with any evidence that forbearance will promote broadband deployment or that it will promote competition in the marketplace, one of the determinative factors in a forbearance analysis. To the contrary, forbearance likely would diminish competitive alternatives in the marketplace to the detriment of consumers and the public interest. Accordingly, the Commission must deny SBC's petition.

#### IV. CONCLUSION

For the foregoing reasons, the PACE Coalition and Talk America respectfully request that the Commission deny SBC's request to forbear from requiring BOCs to make available network elements in accordance with section 271 of the Act for which the Commission has determined should not be unbundled. The Commission also should deny SBC's alternative

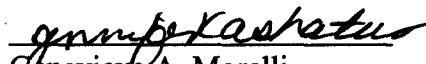
---

<sup>29</sup> *Triennial Review Order* ¶ 253 (stating that “at least one incumbent LEC has supported making available wholesale broadband service offerings because such offerings would make commercial sense”).

<sup>30</sup> *Id.*

request that it forbear from requiring BOCs to make available network elements used for broadband services in accordance with section 271 of the Act.

Respectfully submitted,



Genevieve A. Morelli

Jennifer M. Kashatus

KELLEY DRYE & WARREN LLP

1200 19<sup>th</sup> Street, NW

Suite 500

Washington, D.C. 20036

(202) 955-9600

*Counsel to the PACE Coalition and  
Talk America Inc.*

December 2, 2003

## CERTIFICATE OF SERVICE

I, Alice R. Burruss a legal secretary at Kelley Drye & Warren LLP, do hereby certify that on this 2<sup>nd</sup> day of December 2003, unless otherwise noted, a copy of the foregoing Opposition of The PACE Coalition and Talk America Inc. to SBC Communications Inc.'s Petition for Forbearance was sent by U.S. mail postage prepaid to each of the following:

Marlene H. Dortch, Secretary\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Geoffrey M. Klineberg  
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.  
Sumner Square  
1615 M Street, NW  
Suite 400  
Washington, D.C. 20036-3209

Qualex International  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Room 5-C327  
Washington, D.C. 20554  
(via e-mail)

  
\_\_\_\_\_  
Alice R. Burruss

\* via ECFS